IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETN. NO.2040 OF 2004

Shekhar Namdeo Kadam ... Petitioner

versus

The State of Maharashtra ... Respondent

...

Mrs. Smita R. Kadu Gawai, for the Petitioner.

Mr. B.H. Mehta, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

7th March 2005

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Mehta, A.P.P., waives notice for the Respondent. As short question is involved, petition is taken up for final disposal forthwith by consent.

. This petition takes exception to the order passed by the Deputy Inspector-General of

Prisons, Western Zone, dated 13th July 2004, rejecting Petitioner's request for release on furlough leave. It is not in dispute that the Petitioner is undergoing life imprisonment in respect of offence under section 302 of the Indian Penal Code. The only ground that has been mentioned in the order which is impugned before this Court is that the Petitioner is associated with Daud Gang and suffering death sentence, which was subsequently reduced to life sentence. He has also been sentenced in connection with TADA Case No. 22/1995. This subjective satisfaction has been reached by the appropriate authority on the basis of report submitted by the concerned police station. To ascertain whether there was sufficient material to support the report made by the concerned police station, which was the basis for rejection of the Petitioner's application for furlough leave, original file in connection with furlough leave application was directed to be produced. From the said file, it appears that except the report submitted by the police officer, no other document was placed before the appropriate authority. Indeed, the objection taken by the

concerned police officer in his report may be valid and relevant for reaching at the conclusion as has been reached by the competent authority; however, it was expected of the competent authority to ascertain the correctness of that report and to reassure himself before rejecting the prayer for furlough leave on the said ground. That has not happened in the present case. Learned A.P.P., however, justifies the observation made in the police report relying on the confessional statement of the Petitioner recorded in some criminal case. However, he fairly accepts that it is not possible to suggest that the said document was before the competent authority when the order which is impugned in this petition came to be passed. If it is so, the only course open to this Court is to set aside the impugned order and to relegate the Petitioner to appropriate authority, who, in turn, will re-examine the case in accordance with law. In other words, the appropriate authority will not merely go by the report made by the police officer, but having regard to the seriousness of the charge, himself ascertain the correct position by insisting upon the concerned

police officer to produce relevant record to support the opinion so recorded in his report. Only if he is satisfied about the correctness of that position, should he proceed to reject the prayer for furlough leave.

. Accordingly, this petition succeeds on the above terms. The appropriate authority to finally dispose of the application, which was filed by the Petitioner for furlough leave as restored on account of the present order, within four weeks from the receipt of writ of this Court.

(A.M.KHANWILKAR,J.)